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OFFICE OF PETITIONS

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| In re Application of: | : DECISION ON REQUEST |
| Ellingsen et al. | : FOR REVIEW OF |
| Patent No. 7,048,870 | : PATENT TERM ADJUSTMENT |
| Application No. 09/602528 | : and |
| Filing or 371(c) Date: 06/23/2000 | : NOTICE OF INTENT TO ISSUE |
| Atty Docket No. 06275-199001 | : CERTIFICATE OF CORRECTION |

This letter is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT," filed July 28, 2006. Pursuant to patentee's duty of good faith and candor to the Office, patentee requests confirmation of the issuance of a patent term adjustment of 322 days.

The request for review of the determination of patent term adjustment (PTA) is **granted**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **zero (0) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 23, 2006, the above-identified application matured into U.S. Patent No. 7,048,870, with a revised patent term adjustment of 322 days. On July 28, 2006, patentee submitted the instant comment. Patentee states no basis for the request for review of the patent term adjustment.

Nonetheless, a review of the application history confirms that an incorrect number of days were determined for Applicant and PTO delay.

Applicant delay

A review of the application history reveals that Applicant should have been assessed an additional delay of ninety-six (96) days pursuant to 37 C.F.R. § 1.704(b). 37 CFR 1.704(b) provides, in pertinent part, that:

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude

processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

In this instance, the Office mailed a non-final Office action on October 9, 2002. Applicant filed an Amendment in response to the Office action on April 14, 2003. Pursuant to 37 CFR § 1.704(b), the patent term adjustment should have been reduced by ninety-five (95) days for applicant delay, from the date in excess of three months to reply to the Office action, January 10, 2003, to April 14, 2003, in filing a proper reply to the non-final Office action.

A further review of the application history reveals that Applicant should have been assessed an additional delay of three-hundred and one (301) days pursuant to 37 C.F.R. § 1.704(c)(7). 37 CFR 1.704(c) provides, in pertinent part, that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

- (7) Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed;

In this instance, Applicant filed a Request for Continued Examination ("RCE") and Amendment on August 25, 2003. However, the Amendment was non-compliant. Applicant was notified in a Notice of Non-Compliant Amendment mailed May 20, 2004. Applicant filed a supplemental reply in the form of an Amendment in response to the Notice of Non-Compliant Amendment, on June 21, 2006. Pursuant to 37 CFR § 1.704(c)(7) the patent term adjustment should have been reduced by three-hundred one (301) days for applicant delay, from August 25, 2003, to June 21, 2004, in filing a proper reply to the final rejection.

PTO delay

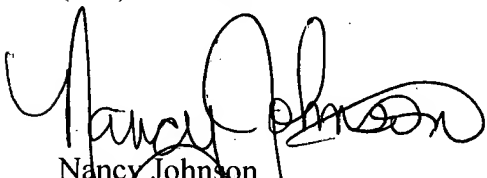
A further review of the application history confirms that an incorrect number of days were determined for PTO delay. The entry of a period of adjustment of 222 days was entered in error. Specifically, a period of adjustment of 222 days was entered for Office delay in taking action in response to applicant's Request for Continued Examination ("RCE") and Amendment filed August 25, 2003. However, and as noted supra, the Office mailed a Notice of Non-Compliant Amendment on May 20, 2004. The mailing of the Notice of Non-Compliant Amendment was a response to a reply under 35 U.S.C. § 132. Pursuant to 37 CFR § 1.704(a)(2), the patent term adjustment should have been adjusted by one-hundred forty-seven (147) days for PTO delay, from August 25, 2003, to May 20, 2004, the date of the mailing of the Notice of Non-Compliant Amendment.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **zero (0) days** (488 days of PTO delay, reduced by 637 days of applicant delay), subject to any terminal disclaimer.

As this letter was submitted as an advisement to the Office of an error in Patentees' favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **ZERO (0) days**.

Telephone inquiries specific to this matter should be directed to Attorney Derek L. Woods, at (571) 272-3232.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,048,870 B1

DATED : May 23, 2006

INVENTOR(S) : Ellingsen et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (322) days

Delete the phrase "by 322 days" and insert – by 0 days--